IN THE HIGH COURT OF JUDICATURE FOR

RAJASTHAN AT JODHPUR

::::

O R D E R

Satya Prakash
Vs.
State of Rajasthan & Ors.

S.B. CIVIL WRIT PETITION NO.6271/2003 UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA.

DATE OF ORDER :: 15th December, 2006

PRESENT

HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

Mr.R.S. Saluja, Advocate for the petitioner.
Mr.Rameshwar Dave, Dy. Govt. Advocate.

BY THE COURT

The petitioner has filed this writ petition with the prayer that the respondents be directed to grant him benefit of

selection scale on completion of 9, 18 and 27 years of service by treating his initial appointment having been made on the post of Stenographer Gr.II in the year 1972 instead of 1982 and alternatively they be directed to appoint him on the post of Stenographer Gr.II w.e.f. 22nd July, 1976.

According to the petitioner he came to be appointed as L.D.C. in the 06th Battalion RAC vide order dated 01st September, 1971. Since the post of Stenographer Gr.II was lying vacant in the office of DIG of Police RAC Range, the petitioner was entrusted the work of that post. The petitioner also submitted an application for regular appointment on that post. While he was not appointed and some other L.D.Cs. like him were also appointed on the post of Stenographer Gr.II. He has given the instances of Sarva Shri Deena Nath and Mahesh Singh who passed Higher Secondary with stenography from HCM Institute in the year 1971 and were appointed on the post of Stenographer Gr.II w.e.f. 13th January, 1972 and 15th January, 1972 respectively without any examination. Similarly one Ramesh Chand Pareek who passed stenography from ITI

was also appointed on the post of Stenographer Fr.II w.e.f. 19th August, 1972 without any examination. The petitioner has given similar example of Sarva Shri U.N. Tripathi, Ghanshyam Somani, Deo Dass, Roop Chand Tehliyani and Laxmi Chand who qualified from recognized Institutions during the period from 1978 and 1979 and were appointed regularly on the post of Stenographer Gr.II. The application of the petitioner was forwarded by the DIG of Police RAC to the DIG of Police (Head Quarters) Rajastha, Jaipur vide letter dated 25th July, 1975. Instead of however promoting him to the post of Stenographer Gr.II the petitioner was promoted as UDC cum Steno vide order dated 28th April, 1976 thereafter the petitioner filed writ petition being S.B. Civil Writ Petition No.2447/1989 and this Court decided the writ petition on the assurance of the respondents that the case of the petitioner shall be considered expeditiously in accordance with law and with these observations the writ petition was disposed of with liberty to file fresh writ petition. The petitioner later came to know that the respondents had in fact granted appointment to him on the post of Stenographer Gr.II on 16th July, 1982 instead of 1972.

Yet he has been assigned seniority of that post w.e.f. 01st May, 1976 immediately below Ramesh Chandra Joshi. The petitioner has referred to Rule 7(7) of the Rajasthan Subordinate Offices Ministerial Staff Rules, 1957 according to which the respondents were considered the case of the petitioner for appointment of Stenographer Gr.II immediately from the date his juniors were appointed on that post. It is in this back ground that the petitioner has prayed that his substantive appointment on the post of Stenographer Gr.II should be treated to have been made in the year 1972, the year in which his juniors were so appointed and accordingly he should be held entitled to count the period of 9, 18 and 27 years of service for the purposes of grant of selection scale.

The respondents have contested the writ petition and filed their reply thereto. According to the respondents, the petitioner was given ad hoc promotion on the post of UDC cum Stenographer w.e.f. 28th April, 1976 on recommendation of the then DIG of Police RAC, Jodhpur. While the petitioner was initially appointed as L.D.C. by order dated 01st September,

1971, he was eligible for promotion from the post of L.D.C. to the post of U.D.C. and then to the post of Office Assistant and then Officer Superintendent. There was another scheme of promotion also for the post of L.D.C. in which an L.D.C. is entitled to promote as U.D.C. cum Stenographer, Stenographer Gr.II, P.A., Senior P.A. The petitioner was appointed as L.D.C. and therefore he was entitled to promotion on the post of U.D.C. cum Stenographer and therefore he was promoted on that post. He could not be straightaway promoted on the post of Stenographer Gr.II, appointment of which is made by way of recruitment through R.P.S.C. The petitioner has not passed the examination of Stenographer Gr.II from R.P.S.C. Initial appointment of the petitioner was made on the post of L.D.C. He cannot seek a mandamus for treating his initial appointment having been made on the post of Stenographer Gr.II. Next promotion of the petitioner is due to the post of Office Assistant. As regards the promotion granted to other L.D.Cs., it is stated that some of promotions were made by way of mistake and it was always open to the respondent to rectify the mistake, but the mistake cannot be allowed to be

perpetuated by requiring the respondents to again repeat the same mistake. Besides, the objection of the respondents is that the petitioner cannot at this belated stage after almost three decades raise the dispute with regard to seniority. The petitioner is only entitled to promotion only on the post on which he has already been promoted. He cannot straightaway claim appointment on the post of Stenographer Gr.II because the cadre of L.D.C. and that of Stenographer Gr.II are different.

I have heard learned counsel for the parties and perused the records.

This writ petition which the petitioner has filed in the year 2003 seeks a remedy cause of action of which according to the averments of the writ petition arose to the petitioner in the year 1972 when his juniors Deena Natha and Mahesh Singh were appointed as Stenographer Gr.II w.e.f. 13th January, 1972 and 15th January, 1972. Appointment by way of direct recruitment, it need not be emphasized, is an altogether

different stream than the promotion. If they were appointed in the year 1972, in the first place if the case of the aforesaid person was that of appointment and not of promotion, the petitioner could not make any grievance because seniority is relevant only in the matter of promotion and not that of appointment and if they were appointed by direct recruitment, the petitioner could not raise any grievance on the basis of seniority list. More over, the cause of action accrued to the petitioner way back in the year 1972. The petitioner has not raised any grievance in regard thereto till he filed the present writ petition in the year 2003. Representations have been made by the petitioner in the year 1987 in regard to grievances pertaining to the year 1975 to 1979. From that standard also, the present petition is enormously delayed.

The writ petition at this stage may not only amount un-settling an otherwise settled position but also amount to giving premium to a person who has been himself negligent about his own rights. If the petitioner does not come to his own rescue in timely approaching this Court, he cannot expect this Court to

come to his rescue either.

The writ petition is liable to be rejected as being devoid of merit but also because it has been filed enormously delayed. The writ petition is accordingly rejected with no order as to costs.

[MOHAMMAD RAFIQ],J.

AKC.